IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA NORTHERN DIVISION

SAMANTHA FRANCIS-	
MOHAMED, et al.,)
Plaintiffs,))) CASE NO. 2:20-CV-1000-WKW
v.) [WO]
CHAD WOLF, et al.,)
Defendants.)

MEMORANDUM OPINION AND ORDER

Under Federal Rule of Civil Procedure 4(m), a plaintiff must serve each defendant within 90 days after the complaint is filed. Today, more than nine months after the complaint was filed, the record still does not establish that any Defendant has been properly served. In response to the court's order to show cause, Plaintiffs only indicate that the delay was due to their mistake regarding the proper procedures for effecting service of process. However, Plaintiffs maintain that at least some Defendants received actual notice of this suit by way of their defective service.

Plaintiffs' mistake does not constitute good cause under Rule 4(m) as required for a mandatory extension of time. Under Rule 4(m), the court also has the discretionary power to extend the 4(m) time limit. *See Horenkamp v. Van Winkle & Co.*, 402 F.3d 1129 (11th Cir. 2005). Before dismissal, the court is required to consider whether other circumstances justify a discretionary extension of time. *See*

Lepone-Dempsey v. Carroll Cty. Comm'rs, 476 F.3d 1277, 1282 (11th Cir. 2007)

(reversing and remanding for failure to consider a discretionary extension). At

minimum, the court must consider whether the case meets the examples cited in

Horenkamp: "if the applicable statute of limitations would bar the refiled action, or

if the defendant is evading service or conceals a defect in attempted service."

Horenkamp, 402 F.3d at 1132–33.

Plaintiffs have not provided sufficient basis for concluding that the statute of

limitations would bar a subsequent refiling or for concluding that any Defendant has

evaded service or concealed a defect in attempted service. Neither Plaintiffs'

mistake of law nor actual notice to Defendants constitutes sufficient basis for an

extension of time and so the court declines to exercise its discretion in that regard.

For these reasons, it is ORDERED that this case is DISMISSED without

prejudice for Plaintiffs' failure to properly serve any Defendant within the period

specified in Rule 4(m).

A final judgment will be entered separately.

DONE this 12th day of August, 2021.

/s/ W. Keith Watkins

UNITED STATES DISTRICT JUDGE

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